

# **2020 JUVENILE JUSTICE VIRTUAL CONFERENCE**

September 24 -25, 2020

Phoenix, Arizona



## **DESTRUCTION OF JUVENILE COURT RECORDS: LAW & MECHANICS OF THE PROCESS**

Presented by:

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Deputy Maricopa County Attorney

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Director, Maricopa County Office of Public Defense Services

**Jan Price**

Account Services Juvenile, Maricopa County Superior Court

**The Honorable Kathleen Quigley**

Judge of the Pima County Superior Court

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL

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ELIZABETH BURTON ORTIZ

EXECUTIVE DIRECTOR

## Destruction of Records

Judge Kathleen Quigley  
Elizabeth Beringhaus  
Jan Price  
Chris Phillips

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## Adjudicated Delinquent or Incurable

- If the person was adjudicated delinquent of a felony, the person retains all civil rights except the right to possess a gun or firearm unless the judge restored that right when he/she was discharged from probation.



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## Setting Aside Adjudication 8-348

- A child/young adult may set aside their adjudication if he or she if:
- 18 years of age
- Fulfilled conditions of probation
- Discharge from ADJC upon successful completion of a treatment plan

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### Offense not Eligible

- 1. Dangerous Offenses 13-105 – *Discharge, use or threatening exhibition of deadly weapon/dangerous instrument or intentional or knowing infliction of serious physical injury*
- 2. Sexual Motivated Offense 13-118
- 3. Offense in violation of Title 13, Chapter 14.
- 4. Offenses 28-1381, 28-1382 or 28-1383
- 5. Offense where victim restitution is owed.



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### Factors for the Court to Consider

- 1. Nature and circumstances of the offense
- 2. Whether person has a felony convictions
- 3. Whether the person has a pending criminal charge
- 4. Victim Impact
- 5. Other relevant information

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### Set Aside Impact

- A set aside keeps the government from being able to use the adjudication to deny:
  - Loans
  - Grants
  - Scholarships
  - Government housing
  - Government jobs



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## Destruction of Records 8-349

- The length of time a child or young adult must wait before applying to have his/her juvenile record destroyed depends upon the adjudicated offense. For less serious offenses the person may apply after obtaining 18, otherwise the person must wait until 25.
- Destruction of Records include records from the Arizona Department Juvenile Corrections.

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## Destruction of Records

- Destruction of Records does not include police records or DMV records.
- Destructions of records will have no impact on information on the internet obtained by firms that run criminal backgrounds.



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## Destruction of Records

- Who may apply at 18
  - Misdemeanors
  - Non 13-501 offenses
  - Non DUI offenses
  - Completion of probation or successfully discharged from AJDC according to 41-2820
  - Paid all restitution
  - No criminal complaints pending
  - No criminal felony convictions
  - Not required to register

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## Destruction of Records

- Who may apply at 25
  - No felony conviction
  - No charges pending
  - Successfully discharged
  - Paid restitution
  - Not required to register



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## Prohibited Possessor

- A person previously adjudicated on a felony offense who possesses a firearm within 10 years of his adjudication/release is guilty of a class 5 felony if previously adjudicated on the following offenses:
  - Burglary first and second
  - Arson
  - Any felony involving the use or threatening exhibition of a deadly weapon
  - A serious offense in 13-706

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## Gun Rights for Juvenile Adjudications

- A misdemeanor adjudication 8-341(R)
  - Juvenile may lose his right to possess a firearm as a term of juvenile probation or until 18 years of age.
  - Juvenile may apply to restore gun right immediately upon release from probation or Department of Juvenile Corrections.



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## Gun Rights

- A felony adjudication- 8-249
  - If the person's adjudication was for a dangerous offense under section 13-704, a serious offense as defined in section 13-706, burglary in the first degree, burglary in the second degree or arson, the person may not file for the restoration of the right to possess or carry a gun or firearm until the person attains thirty years of age.

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## Gun Rights

- If the person's adjudication was for any other felony offense, the person may not file for the restoration of the right to possess or carry a gun or firearm for two years from the date of the person's discharge.
- The application must be made in Juvenile Court.

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## Restitution Lien 8-344

- Juvenile Court retains jurisdiction of the case after the juvenile reaches 18 to modify restitution. After a juvenile attains eighteen years of age, the juvenile court shall enter the following:
  1. Juvenile restitution in favor of the state for the unpaid balance of fees and fines
  2. Juvenile restitution order in favor of each person entitled to restitution for the unpaid balance.
  3. The clerk of the court shall send a copy of the juvenile restitution order to each person who is entitled to restitution.

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## Restitution Lien 8-345

- Enforced as a civil judgment
- Not dischargeable in bankruptcy court



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## Restitution Lien

- Lien will contain:
  1. The name and date of birth of the juvenile or the parent of the juvenile who owes restitution
  2. The present residence or principal place of business of the juvenile or the parent of the juvenile named in the lien, if known.
  3. The JV/File number of the case in which restitution was ordered.
  4. The name of the county attorneys and the name and address of the person entitled to restitution.
  5. A statement that the notice is being filed pursuant to this section.
  6. The amount of restitution that the juvenile or the parent of the juvenile has been ordered to pay.
  7. A statement that the total amount of restitution owed will change and that the clerk of the superior court shall maintain a record of the outstanding balance

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## Proposed Legislation

1. Person whose records have been sealed does not need to disclose the existence of the record.
2. Only the person whose records were sealed would be able to request a copy or the conservator/guardian of the person.
3. Records could be sealed if youth owed restitution and the court found extenuating circumstances existed (youth owed a large sum of restitution).
4. Youth adjudicated of a 13-501 or title 28 offense would be able to seal their record at 21.

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